

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERK'S OFFICE

2005 MAY 20 A 10:23

U.S. DISTRICT COURT
DISTRICT OF MASS.

Ernst Fernezan,
Plaintiff

v.

Plymouth Rubber Company, Inc.
Defendant

05 11057 NMG

NOTICE OF REMOVAL OF
CIVIL ACTION PURSUANT
TO 28 U.S.C. §1332(a)

CIVIL ACTION NO.:

RECEIPT # 64447
AMOUNT \$ 350.00

SUMMONS ISSUED NA

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DEPT. CLERK states M.P.

DATE 5/20/05

NOTICE OF REMOVAL

Defendant Plymouth Rubber Company, Inc. respectfully states
the following in support of this Notice of Removal based on this
Court's diversity jurisdiction:

MAGISTRATE JUDGE LTS

1. On or about April 13, 2005, Plaintiff Ernst Fernezan initiated an action against the Defendant Plymouth Rubber Company, Inc. in the Superior Court of the State of Massachusetts, Norfolk County ("the State Court Action").

2. On May 4, 2005, Fernezan served Plymouth Rubber Company with a copy of the Summons and Complaint. A true and correct copy of the Summons and Complaint, served upon Plymouth Rubber Company are attached hereto as Exhibit A.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a) and 1441(e) and Plaintiff alleges the amount in controversy as \$120,000.

4. Plaintiff is a resident of the State of Rhode Island.
(Complaint Para. 1).

5. Defendant is a Massachusetts Corporation with a place
of business in Canton, Massachusetts. (Complaint Para. 2).

6. Pursuant to 28 U.S.C. § 1446(a), all process,
pleadings and orders that have been served upon Defendant to
date in this matter are included with this Notice of Removal as
Exhibit A.

7. Pursuant to 28 U.S.C. § 1446(d), a true and complete
copy of this Notice of Removal will be submitted for filing with
the Clerk of the State Superior Court, Norfolk County.

8. This Notice of Removal is being filed within 30 days,
as defined by 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a),
after Defendants first received a copy of the Summons and
Complaint as well as notice of the claims made herein.

9. Written notice of the filing of this Notice of Removal
has been given to all parties who have appeared in this action.

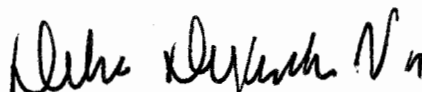
10. The required filing fee of \$250.00 and an executed
Civil Cover Sheet accompany this Notice.

11. Pursuant to Local Rule 81.1., Defendant Plymouth
Rubber shall request from the Clerk of the Norfolk Superior
Court certified or attested copies of all records and
proceedings in the state court and certified or attested copies
of all docket entries in the state court, and shall file the

same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, the Defendant Plymouth Rubber prays that the action now pending in the Norfolk County Superior Court be removed therefrom to this Court.

Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorneys,



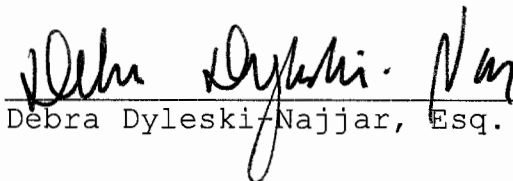
Debra Dyleski-Najjar, BBO No.: 366730
The Wagner Law Group, PC
One Financial Center
Boston, MA 02111

Dated: May 20, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, hereby certify that on this 20th day of May 2005, I caused a true and accurate copy of the foregoing Notice of Removal and of the accompanying Notice to Plaintiff to be served by first class U.S. Mail, postage prepaid, upon the following:

David Green, Esq.
Alford & Bertrand, LLC
60 Arsenal Street
P.O. Box 322
Watertown, MA 02471-0322


Debra Dyleski-Najjar, Esq.

COMMONWEALTH OF MASSACHUSETTS

COPY

NORFOLK, ss.

LS

SUPERIOR COURT
CIVIL ACTION

NO. 05 00732

ERNST FERNEZAN

Plaintiff(s)

v.

PLYMOUTH RUBBER COMPANY

Defendant(s)

SUMMONS

To the above-named Defendant: Plymouth Rubber Company

You are hereby summoned and required to serve upon David Green, Esquire, plaintiff's attorney, whose address is P.O. Box 322, Watertown, MA 02471-0322, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Dedham either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

BARBARA J. ROUSE, Esquire

WITNESS, SUZANNE V. DELVECCHIO, Esquire, at Dedham the 28th

day of April, in the year of our Lord two thousand and Five

A TRUE COPY, ATTEST:

DEPUTY SHERIFF

DATE 5/4/05

Trish A. Smith Clerk

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on, 20, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

.....

.....

.....

Dated:, 20

N. B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

....., 20

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

NO.

Plaintiff

v.

Defendant

SUMMONS

(Mass. R. Civ. P.4)

01/20/2005 11:00AM L. A. 46828

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
DOCKET NO: REQUESTED

ERNST FERNEZAN *
PLAINTIFF *
VS. *
PLYMOUTH RUBBER COMPANY*
DEFENDANT *

Introduction

The Plaintiff, Ernst Fernezan, brings this action against the Defendant, Plymouth Rubber Company, pursuant to Mass.Gen.L. Ch. 152, §75B(2) which prohibits an employer from discharging, refusing to hire, or in any other manner discriminating against an employee because the employee has exercised his rights under the Massachusetts Worker's Compensation Act.

Parties

1. The Plaintiff is an adult resident of the state of Rhode Island, residing at 35 Thackray Street, Providence, Rhode Island.
2. The Defendant, Plymouth Rubber Company is a duly organized corporation with substantial business contacts in the Commonwealth of Massachusetts, doing substantial business in the Commonwealth of Massachusetts and with a principal place of business at 104 Revere Street, Canton, Massachusetts.

Facts

3. On or about July 22, 2002 Plaintiff was involved in a work-related accident that occurred on Defendant's premises.
4. Plaintiff has not returned to work since the date of the accident.
5. As a result of the industrial accident, Plaintiff filed a workers' compensation claim.
6. Defendant was aware of the workers' compensation claim and participated in the process at the Department of Industrial Accidents.
7. On or about March 28, 2005, Defendant purportedly sent Plaintiff a letter, stating that he was terminated on March 28, 2005.

8. Plaintiff's case was scheduled for a lump sum settlement on March 29, 2005, which Defendant was aware of and participated in.
9. The lump sum was approved on March 29, 2005 at the Department of Industrial Accidents.

**COUNT 1 - DEFENDANT LIBERTY PROPERTIES -
VIOLATION OF MASS.GEN.L. CH. 152, §75b(2)**

(The Plaintiff reasserts the allegations set forth in paragraphs 1 - 9 above and incorporates the same herein by reference.)

10. The Defendant discharged the Plaintiff in violation of Mass.Gen.L. Ch. 152, §75B(2) for exercising his rights under and pursuant to the Massachusetts Worker's Compensation Act.
11. The Defendant discriminated against the Plaintiff in violation of Mass.Gen.L. Ch. 152, §75 (2) for exercising his rights under and pursuant to the Massachusetts Worker's Compensation Act.
12. As a direct and proximate result of the illegal actions of the Defendant as herein above set forth, the Plaintiff has been caused to suffer financial loss, lost wages and benefits, mental anguish and pain and suffering.

WHEREFORE, the Plaintiff demands that judgment be entered for his damages with lost wages and benefits and pain and suffering against the Defendant, together with interest, costs, and attorney's fees with actual and compensatory damages. The Plaintiff also demands the Court enter an Order compelling the Defendant to grant the Plaintiff suitable employment, and such other relief as the Court deems just.

Plaintiff demands a jury trial on all counts.

By Plaintiff's Attorney,



DAVID GREEN, ESQUIRE
ALFORD & BERTRAND, LLC
60 Arsenal Street
Post Office Box 322
Watertown, MA 02471-0322
(617) 926-8800

**CIVIL ACTION
COVER SHEET**

DOCKET NO.(S)

Case 1:05-cv-11057-NMG

Document 1-2

Filed 05/30/05

Page 5 of 12

**Trial Court of Massachusetts
Superior Court Department**

C ity: Norfolk



PLAINTIFF(S)

Ernst Fernezan

DEFENDANT(S)

Plymouth Rubber Company

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE David Green
Alford & Bertrand, 60 Arsenal Street
Watertown, MA 02471 (617) 926-8800

ATTORNEY (if known)

Board of Bar Overseers number: 642406

Origin code and track designation

Place an x in one box only:

- ☒ 1. F01 Original Complaint
☐ 2. F02 Removal to Sup.Ct. C.231,s.104
(Before trial) (F)
☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
☐ 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

E11 Workers Comp. (x) (x) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

Documented medical expenses to date:

- | | |
|--|----------|
| 1. Total hospital expenses | \$ |
| 2. Total Doctor expenses | \$ |
| 3. Total chiropractic expenses | \$ |
| 4. Total physical therapy expenses | \$ |
| 5. Total other expenses (describe) | \$ |

Subtotal \$

Documented lost wages and compensation to date

\$47,960.50

Documented property damages to date

\$

Reasonably anticipated future medical and hospital expenses

\$

Reasonably anticipated lost wages

\$43,907.76

Other documented items of damages (describe)

pain and suffering, emotional damages

\$ 28,131.74

Brief description of plaintiff's injury, including nature and extent of injury (describe)

Plaintiff was terminated by Defendnat while he was receiving workers' compensation benefits

\$

TOTAL \$120,000.00

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record [Signature]

DATE: 4-13-05

CIVIL DOCKET# NOCV2005-00732-A

RE: Fernezan v Plymouth Rubber Company

TO: David M Green, Esquire
Alford & Bertrand
60 Arsenal Street
PO Box 322
Watertown, MA 02471-0322

TRACKING ORDER - X TRACK

You are hereby notified that this case is on the **accelerated (X) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	07/24/2005
Response to the complaint filed (also see MRCP 12)	09/22/2005
Firm trial date set	10/22/2005
Case disposed	11/21/2005

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session **A** sitting in **CtRm 10** at **Norfolk Superior Court**.

Dated: 04/25/2005

Walter F. Timilty
Clerk of the Courts
BY:
Assistant Clerk

Location: CtRm 10
Telephone: (781) 326-1600

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERK'S OFFICE

2005 MAY 20 A 10:20

Ernst Fernezan,)	
Plaintiff)	
vs.)	Civil Action No. _____
Plymouth Rubber Company, Inc.)	
Defendant)	

U.S. DISTRICT COURT
DISTRICT OF MASS.

05 11057 NMG

ANSWER OF DEFENDANT PLYMOUTH RUBBER COMPANY, INC.

Now Comes Defendant, Plymouth Rubber Company, Inc.
(hereinafter "Plymouth") and answers the Complaint of
Plaintiff, Ernst Fernezan. Except as expressly admitted
herein, Plymouth denies each and every allegation in the
Complaint.

PARTIES

1. In reference to Paragraph 1 of the Complaint,
Plymouth states that it is without knowledge or information
sufficient to form a belief as to the truth of the
allegation that Plaintiff resides at 35 Thackray Street,
Providence, Rhode Island. Plymouth admits that Plaintiff
is an adult resident of Rhode Island.

2. In reference to Paragraph 2 of the Complaint,
Plymouth admits it is a duly organized corporation, doing
business in the Commonwealth of Massachusetts with a place

of business at 104 Revere Street, Canton, Massachusetts. By way of further response, Plymouth states that it is a Massachusetts Corporation.

FACTS

3. Plymouth admits the allegations in Paragraph 3 of the Complaint.

4. Plymouth denies each and every allegation in Paragraph 4 of the Complaint.

5. In reference to Paragraph 5 of the Complaint, Plymouth admits that Plaintiff filed a Workers' Compensation claim. Plymouth denies each and every remaining allegation in Paragraph 5.

6. In reference to Paragraph 6 of the Complaint, Plymouth admits that it was aware that Plaintiff filed a claim for workers compensation, and that its workers compensation carrier participated in the hearing process at the Department of Industrial Accidents. Plymouth denies each and every remaining allegation in Paragraph 6.

7. In reference to Paragraph 7 of the Complaint, Plymouth admits that it sent plaintiff a letter dated March 28, 2005, attached hereto as Exhibit A, which speaks for itself. Plymouth denies each and every remaining allegation in Paragraph 7 of the Complaint.

8. In reference to Paragraph 8 of the Complaint, Plymouth admits that on or about March 29, 2005, the Department of Industrial Accidents approved a Lump Sum Settlement Agreement, in which Plymouth's Workers Compensations carrier participated. Plymouth denies each and every remaining allegation in paragraph 8 of the Complaint.

9. In reference to Paragraph 9 of the Complaint, Plymouth admits that the Department of Industrial Accidents approved a Lump Sum Settlement Agreement relating to Plaintiff's claims on or about March 29, 2005 which speaks for itself and is attached hereto as Exhibit B. Plymouth denies each and every remaining allegation in Paragraph 9.

COUNT I

(Plymouth incorporates its responses to paragraphs 1-9 of the Complaint as if set forth herein.)

10. Plymouth denies each and every allegation in Paragraph 10.

11. Plymouth denies each and every allegation in Paragraph 11.

12. Plymouth denies each and every allegation of Paragraph 12.

**EXCEPT AS EXPRESSLY ADMITTED HEREIN, PLYMOUTH DENIES EACH
AND EVERY ALLEGATION IN THE COMPLAINT.**

DEFENDANT'S DEFENSES

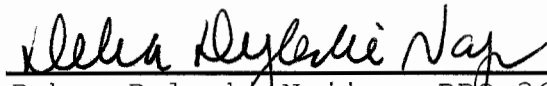
Without taking any position as to whether such defenses below are affirmative or otherwise, Plymouth states the following defenses and affirmative defenses:

1. Plaintiff fails to state any claim on which relief can be granted.
2. Plaintiff has not and cannot meet his burden of showing that he was discriminated against by Plymouth because he exercised any right protected by the Massachusetts Workers' Compensation Act.
3. Plaintiff is estopped by his own conduct, which includes failing and refusing to return to employment with Plymouth Rubber.
4. Plaintiff failed to mitigate his damages.
5. Some or all of the alleged damages arise from Plaintiff's own misconduct.
6. Plaintiff's claim is barred due to job abandonment, as he applied for and received unemployment benefits during or around the month of April 2003 while seeking employment with other employers.
7. Plaintiff's claims are barred as a matter of law by M.G.L. Ch.152, § 48(4) because Plaintiff is presumed to be physically incapable of returning to work at Plymouth Rubber as a result of the lump sum settlement.

8. Plaintiff's claim is barred by his failure to seek reemployment with Plymouth Rubber.

9. Plaintiff waived reemployment at Plymouth by demanding a lump sum settlement of his Workers' Compensation Claim.

Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorney,



Debra Dyleski-Najjar, BBO 366730
The Wagner Law Group, PC
One Financial Center
Boston, MA 02111
Tel. No.: (617) 357-5200

Dated: May 20, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, Esq., hereby certify that on the 20th day of May, 2005, I caused a copy of the foregoing Answer of Defendant to be served, via first-class mail, postage prepaid on the Plaintiff's Attorney, David Green, Esq., Alford & Bertrand, LLC, 60 Arsenal Street, P.O. Box 322, Watertown, MA 02471-0322.



Debra Dyleski-Najjar, Esq.,

Plymouth Rubber Company

104 Revere Street • Canton, Massachusetts 02021-2996

March 28, 2005

Ernst Fernezan
PO Box 27543
Providence, RI 02907

Dear Ernst,

We are sorry you have not yet recovered from your injury and have not been able to return to work. Unfortunately because of your absence, for one year, from work it is necessary for us to remove you from our active employee list. As result of your removal from the active employee list from Plymouth Rubber Company, Inc. effective March 28, 2005, we are providing you with the following information about your benefits.

Your life insurance will end on March 28, 2005. You may apply for conversation of your life insurance (see attached Life Insurance Conversion forms).

We hope you are feeling better and recover from your injury in the near future. When you are able to resume work you may reapply for employment at the Plymouth Rubber Company.

We wish you the best in the future. Please do not hesitate to contact me if you have any questions.

Sincerely,



Don Andrejczyk
Director, Human Resources

Enclosures

Plymouth

Electrical Tapes • Automotive Tapes • Industrial Tapes • Highway Marking Products

Telephone: 781.828.0220 • Fax: 781.828.6041 • info@plymouthrubber.com • www.plymouthrubber.com

FORM 117



The Commonwealth of Massachusetts

Department of Industrial Accidents

600 Washington Street - 7th Floor, Boston, Massachusetts 02111

Info. Line 800-323-3249 ext. 470 in Mass. Outside Mass. - 617-727-4900 ext. 470

<http://www.mass.gov/dla>

DIA Board #

(If Known):

23570-02

Page 1 of 2

Please Print or Type

AGREEMENT FOR REDEEMING LIABILITY

BY LUMP SUM UNDER G.L. CH. 152

FOR INJURIES OCCURRING ON OR AFTER NOV. 1, 1986

EMPLOYEE Ernst Fernandez LUMP SUM AMOUNT \$ 28,000.00

EMPLOYER Plymouth Rubber Company TOTAL DEDUCTIONS \$ 8,132.62

INSURER Granite State Insurance
c/o AIGCS NET TO CLAIMANT \$ 19,867.38

BOARD NUMBER 23570-02 TOTAL PAYMENTS \$ 70,973.70
(Weekly benefits plus lump sum)

DATE OF INJURY July 22, 2002

CHECK WHERE APPLICABLE

- (X) Liability has been established by acceptance or by standing decision of the Board, the Reviewing Board, or a court of the Commonwealth and this settlement shall not redeem liability for the payment of medical benefits and vocational rehabilitation benefits with respect to such injury.
- () Liability has **NOT** been established by standing decision of the Board, the Reviewing Board, or a court of the Commonwealth and this settlement shall redeem liability for the payment of medical benefits and vocational rehabilitation benefits with respect to such injury.
- (X) In addition to the lump-sum, the insurer agrees to pay ~~the cost of~~ **cost of Industrial Accidents** medical and related medical bills incurred as of this date.
- () The employee is currently receiving a cost-of-living adjustment.
- Conciliation Unit**
Lump Sum Approved As Complete

DEDUCTIONS: From the lump-sum amount as stated above, Contribution(s) listed below, will be deducted and paid directly to the following parties:

AMOUNT	NAME	ADDRESS
1. \$ 5,000.00 Attorney's Fee	Ronald A. Dardeno	424 Broadway, Somerville, MA 02145
2. \$ 132.62 Attorney's Expenses	Ronald A. Dardeno (Please attach documentation)	424 Broadway, Somerville, MA 02145
3. \$ Liens	(Please attach discharges)	
4. \$ Inchoate Rights	(Please specify release)	
5. \$ 3,000.00 Sect 36.	Ernst Fernandez	35 Thackerway St, Apt 5, Providence RI 02907
6. \$		
7. \$		

(OVER)

AGREEMENT FOR REDEEMING LIABILITY BY LUMP SUM SETTLEMENT (Page 2 of 2)

EMPLOYEE MEDICAL INFORMATION:

Age 40 No. of Dependents 2 Average Weekly Wage \$ 844.38 Compensation Rate \$ 506.63
 Social Security No. [REDACTED] Occupation Machine Operating Helper Educational Background 11th grade
 On Social Security: YES () NO (X)
 On Public Employee Disability Retirement: YES () NO (X)
 DIAGNOSIS ulna fracture PRESENT MEDICAL CONDITION Stable
lacerations
 Present Work Capacity: limited Third Party Action _____

**PLEASE GIVE A BRIEF HISTORY OF THE CASE AND INDICATE WHY THE SETTLEMENT IS
 IN THE EMPLOYEE'S BEST INTEREST (Specify all allocations):**

See Addendum

(Please attach a separate sheet if necessary.)

Received of Granite State Insurance c/o AIGCS the Lump Sum of twenty eight
thousand dollars and no cents (\$ 28,000.00)

This payment is received in redemption of the liability of all weekly payments now or in the future due me under the Workers' Compensation Act, for all injuries received by Ernst Fernezan
 on or about July 22, 2002 while in the employ of Plymouth Rubber Company

_____. I fully understand that after all of the deductions herein I will receive \$ _____. I am fully satisfied with and request approval of this settlement. This agreement has been translated for me into my native language of _____.

	SIGNATURE	ADDRESS	ZIP CODE
CLAIMANT:	<u>[Signature]</u> Ernst Fernezan	<u>35 Thackerway St, Apt 5</u> Providence, RI	<u>02907</u>
CLAIMANT'S COUNSEL:	<u>[Signature]</u> Ronald A. Darden	<u>424 Broadway</u> Somerville, MA	<u>02145</u>
INSURER'S COUNSEL:	<u>[Signature]</u> Ellen Harrington Sullivan	<u>301 Edgewater Place Ste 330</u> Wakefield MA 01880	
Signed this	<u>25th</u>	day of <u>March</u>	<u>2005</u>

*Disclosure of Social Security Number is Voluntary. It will aid in the processing of this document.

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Superior Court

Docket No.: NOCV2005-00732-A

Ernst Fernezan,
Plaintiff

vs.


Plymouth Rubber Company,
Defendant

NOTICE TO PLAINTIFF

To: David Green, Esq.
Alford & Bertrand, LLC
60 Arsenal Street
Post Office Box 322
Watertown, MA 02471-0322

PLEASE TAKE NOTICE that the Defendant Plymouth Rubber Company, Inc. in the above-captioned action did, on May 20, 2005 file in the United States District Court for the District of Massachusetts, the attached Notice of Removal of said case from the above-referenced Court to the United States District Court for the District of Massachusetts.

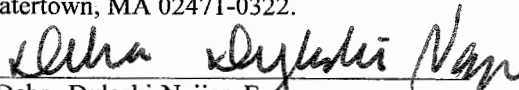
Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorneys,


Debra Dyleski-Najjar, Esq., BBO No.: 366730
The Wagner Law Group, PC
One Financial Center
Boston, MA 02111
(617) 537-5200

Dated: May 20, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, Esq., hereby certify that on the 20th day of May, 2005, I caused a copy of the foregoing Notice to Plaintiff to be served, via first-class mail, postage prepaid on the Plaintiff's Attorney, David Green, Esq., Alford & Bertrand, LLC, 60 Arsenal Street, P.O. Box 322, Watertown, MA 02471-0322.


Debra Dyleski-Najjar, Esq.

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Superior Court

Ernst Fernezan,
Plaintiff

vs.

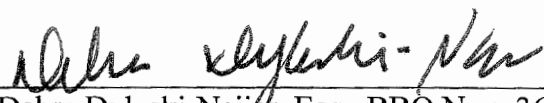
Plymouth Rubber Company,
Defendant

Docket No.: NOCV2005-00732-A

NOTICE OF FILING

PLEASE TAKE NOTICE that, on this date, Defendant Plymouth Rubber Company, Inc. filed with the United States District Court for the District of Massachusetts, its Notice of Removal, a copy of which is attached to this Notice of Filing, effecting the removal of this action to federal court.

Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorneys,


Debra Dyleski-Najjar, Esq., BBO No.: 366730
The Wagner Law Group, PC
One Financial Center
25th Floor
Boston, MA 02111
(617) 537-5200

Dated: May 20, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, Esq., hereby certify that on the 20 day of May, 2005, I caused a copy of the foregoing to be served, via first-class mail, postage prepaid on the Plaintiff's Attorney, David Green, Esq., Alford & Bertrand, LLC, 60 Arsenal Street, P.O. Box 322, Watertown, MA 02471-0322.


Debra Dyleski-Najjar, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Ernst Fernandez,
Plaintiff

vs.

Plymouth Rubber Company, Inc.
Defendant

Civil Action No. _____

05 11057 NMG

CORPORATE DISCLOSURE STATEMENT LOCAL RULE 7.3(A)

- ☐ The filing party, a non governmental corporation, identifies the following parent companies (list the names and addresses of each parent corporation and any publicly held company that owns 10% or more of the party's stock):
- ☐ The filing party identifies the following publicly held corporation with which a merger agreement with the party exists:
- ☒ The filing party has no parent companies or merger agreements with publicly held corporations.

Respectfully submitted,
Plymouth Rubber Company, Inc.
By its attorney,

Debra Dyleski-Najjar

Debra Dyleski-Najjar, BBO #: 366730
The Wagner Law Group
One Financial Center
Boston, MA 02111
Tel. No.: (617) 357-5200

²⁰
Dated: May 11, 2005

CERTIFICATE OF SERVICE

I, Debra Dyleski-Najjar, Esq., hereby certify that on the 20th day of May, 2005, I caused a copy of the foregoing Corporate Disclosure Statement to be served, via first-class mail, postage prepaid on the Plaintiff's Attorney, David Green, Esq., Alford & Bertrand, LLC, 60 Arsenal Street, P.O. Box 322, Watertown, MA 02471-0322.

Debra Dyleski-Najjar
Debra Dyleski-Najjar, Esq.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS ERNST FERNEZAN (b) County of Residence of First Listed Plaintiff <u>RHODE ISLAND</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) David Green, Esq., Alford & Bertrand, LLC, 60 Arsenal St., P. O. Box 322, Watertown, MA 02471-0322	DEFENDANTS PLYMOUTH RUBBER COMPANY, INC. County of Residence of First Listed Defendant <u>NORFOLK</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) Debora Dyleski-Najjar, Esq., The Wagner Law Group, Inc., One Financial Center, Boston, MA 02111
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 33%;">PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input checked="" type="checkbox"/> 2 DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4	Citizen of Another State	PTF <input checked="" type="checkbox"/> 2 DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input checked="" type="checkbox"/> 4										
Citizen of Another State	PTF <input checked="" type="checkbox"/> 2 DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5										
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6										

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)						
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. Section 1332</u> Brief description of cause: <u>Alleged worker's compensation discrimination, M.G.L. c. 152, Section 15B</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>\$120,000</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE <u>5/20/05</u>	SIGNATURE OF ATTORNEY OF RECORD <u>Debora Dyleski-Najjar</u>
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____
	JUDGE _____	MAG. JUDGE _____	

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERK'S OFFICE

MAY 20 A 10 20

DISTRICT OF MASS.

1. Title of case (name of first party on each side only) Ernst Fernezan v. Plymouth Rubber Company, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

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3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Debra Dyleski-NajjarADDRESS The Wagner Law Group, One Financial Center, Boston, MA 02111TELEPHONE NO. (617) 357-5200